



# Legal Views

- ❖ Current Issues
- ❖ Case Notes
- ❖ Counsel Help

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*A Resource from Montgomery County's Office of the County Attorney*

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Isiah Leggett, County Executive

Leon Rodriguez, County Attorney

## Protection of Your Personal Information Now the Law in Maryland

**Erin Ashbarry**

A new law took effect this year in Maryland to protect personal information. The Maryland Personal Information Protection Act (PIPA) requires businesses to have security procedures in place to protect personal information, which encompasses an individual's social security number, driver's license number, and financial accounts (such as credit cards).

The law requires the investigation of any breach in the security of a computer system used to store personal information. If the investigation reveals a breach that could result in the misuse of personal information, the business must notify the individual(s) affected of the breach as soon as reasonably practicable. The notice must identify the elements of personal information that the

*continued to page 2*

## Perception Can Be Reality Under the ADA

**Sharon Burrell**

Not only can an employer be liable for violating the Americans with Disabilities Act for discriminating against an employee who has a disability as defined by the Act, but an employer can also be liable for violating the Act even if the employee does not meet the definition of having a disability under the Act. This is because the law also prohibits employers from discriminating against individuals that they "regard" as having a disability. One employer found this out the hard way.

The Phoenix Specialty Manufacturing Company makes specialty washers used primarily in aircraft manufacturing. Jimmy Wilson worked for Phoenix as its shipping supervisor for ten years before he was diagnosed with Parkinson's disease. While the disease did not limit Wilson's abilities to perform his duties, after Wilson had a major panic attack at work, senior management at Phoenix began to treat Wilson as if it did. Wilson's supervisor stopped meeting with him and refused to even look at him. The company's president avoided Wilson whenever possible and made Wilson give updates about his condition after every doctor's visit. When the company installed a new computer system, senior management refused to train Wilson, fearing that he would make errors and instructed him not to do counting tasks.

The company decided to eliminate two salaried positions – Wilson's shipping supervisor job and the press room manager – and replace them with hourly employees. Wilson asked if he could stay and work in any position, but Phoenix refused. Meanwhile, the company transferred the press room manager to

*continued to page 2*

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### INSIDE THIS ISSUE

- 2 Energy-Efficient Light Bulbs
- 3 Protecting and Promoting Civil Rights



business knows or believes were accessed by unauthorized persons.

The mandates of the PIPA apply to a “business,” which is defined as a sole proprietorship, partnership, association, or any other business entity, regardless of whether it is non-profit or for-profit. The term “business” also includes a financial institution organized, chartered, licensed, or otherwise authorized under state law, federal law, or the laws of any other country.

Although state and local governments do not meet the definition of “business” listed in the statute, it may be prudent to adopt the standards as a best practice to follow in the event of a security breach resulting in the disclosure of personal information. State and local governments already are subject to laws governing public entities, such as the Maryland Public Information Act, which prohibit disclosure of the same categories of information listed in the PIPA as personal information in need of protection.

In addition to compliance with the PIPA, any County contractor with access to a County computer or the County’s computer systems must comply with County Administrative Procedure 6-7, which mandates that any information stored, transmitted, or received in County computers be protected from theft, unauthorized destruction, use, modification, or disclosure. ❖

## **Light Your Way with Energy-Efficient Light Bulbs**

### **Terrilyn Brooks**

Today, many people are concerned about the environment. One area garnering quite a bit of attention is energy efficiency. Not only are we concerned with the energy efficiency of the vehicles we drive, but many people are focusing on the energy efficiency of light bulbs. Today’s manufactures make and market energy-efficient light bulbs to meet the demands and concerns of consumers.

Many types of energy-efficient light bulbs are on the market. One type is categorized as compact fluorescent lights (CFL). A CFL is smaller than a fluorescent bulb, yet it gives off an incandescent light, rather than fluorescent

*continued to page 4*

another job. Within minutes of terminating Wilson, Phoenix promoted an employee to fill a newly created position of foreman of the shipping department, which was essentially the position that Wilson had occupied.

Wilson filed a charge with the EEOC and later sued in federal district court. Phoenix’s main defense was that it terminated Wilson because of a downturn in sales to the aircraft industry after the events of September 11, which required a reduction in its workforce. Following a bench trial, the district court found that Phoenix’s explanation was not credible because only two employees were involved in the reduction and one was given another job, the company paid bonuses during the time of the alleged financial difficulties, and it created a new job with the same duties as Wilson’s. The court also rejected the other reasons that Phoenix gave for eliminating Wilson’s position and why it was unable to place him in another job. The court held that Phoenix regarded Wilson as disabled, failed to accommodate his perceived disability and terminated him because of his perceived disability in violation of the ADA.

On appeal, the Fourth Circuit affirmed, holding that the district court’s findings were not clearly erroneous. The court noted that Phoenix’s perceptions about the extent of Wilson’s impairment were inaccurate because management believed that the Parkinson’s symptoms were substantially more limiting than they actually were. It didn’t matter that Wilson was not considered to be disabled under the Act. All that mattered was that Phoenix treated Wilson as if he were disabled, and fired him because of it. ❖

*Wilson v. Phoenix Specialty Manufacturing Company*, 513 F.3d 378 (4th Cir. 2008).



# Protecting and Promoting Civil Rights in Montgomery County – The Agency Process

## Nancy Appel

In Montgomery County, the Office of Human Rights stands on the front line to protect and promote residents' civil rights. One of its many functions is the resolution of complaints filed by a person who believes that a discriminatory practice occurred. In addition to the Office of Human Rights, Montgomery County supplements its enforcement through the work of the 15-member Commission on Human Rights, appointed by the County Executive to serve as representatives of this diverse County.

A Complainant alleging discriminatory treatment in employment, housing, public accommodations or real estate transactions may initiate administrative action with the Office of Human Rights. County law prohibits discrimination based upon race, color, religious creed, ancestry, national origin, age, sex, marital status, disability,

genetic status, presence of children, family responsibility, or source of income.

After receiving a formal complaint sworn under the penalty of perjury, the Office invites both the Complainant and the Respondent to participate in confidential mediation, administered under a joint program with the Montgomery County Bar Association. If the parties cannot resolve their dispute through mediation, the Office of Human Rights investigates the complaint. As with mediation, all information is confidential.

After completing its investigation, the Office of Human Rights issues a determination, either finding reasonable grounds to support the Complainant or finding no reasonable grounds to sustain the complaint. A Complainant may challenge a finding of no reasonable grounds by requesting a panel review from the Commission on Human Rights.

If the Office of Human Rights determines that reasonable grounds support the complaint, the parties may conciliate their dispute. Successful conciliation ends the administrative process. Alternatively, unsuccessful conciliation requires a public hearing in which both parties litigate the finding that a discriminatory act occurred. A Hearing Officer will issue an opinion to affirm or reverse the decision of the Office of Human Rights. Either the Complainant or Respondent may challenge the Hearing Officer's decision and request further review from the Commission on Human Rights.

Ultimately, the Human Rights Commission must affirm, reject, or modify the recommendation of the Hearing Officer. Once there is a final decision by the Commissioners, the administrative process ends. For the next enforcement step, a disappointed party must initiate a court action to challenge the Commission's decision. ❖

Office of the County Attorney – Legal Views  
101 Monroe Street, 3<sup>rd</sup> Floor, Rockville, MD 20850  
(240) 777-6700  
<http://www.montgomerycountymd.gov/govtempl.asp?url=/content/countyatty/index.asp>

### **Publisher**

*Leon Rodriguez, County Attorney*

### **Managing Editor**

*Janita L. Burdette, Paralegal*

### **Editorial Staff**

*Sharon V. Burrell*

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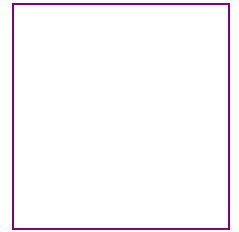
*Patricia P. Via*

**Legal Views** is a quarterly newsletter prepared as part of the County Attorney's preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.





Legal Views  
Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850



ADDRESS CORRECTION REQUESTED

***Light Bulbs***

*continued from page 2*

light. CFLs offer several benefits. CFLs are energy-efficient, using between 50% and 80% less energy than the traditional bulbs. CFLs last longer than the traditional light bulbs and they provide a warm light, rather than a cool white light. Overall, the benefits of CFLs are positive, although some question the mercury content of these bulbs and the consequential disposal issues. Not all fluorescent light bulbs have the same amount of mercury. Regardless of the content, it is important to keep the mercury from the CFLs out of the waste stream when the bulb expires as, over time, depositing the expired CFLs into a landfill could become an issue. However, in Montgomery County, the waste-to-energy facility captures mercury emissions through activated carbon filtration.

Montgomery County's Division of Solid Waste Services encourages recycling these bulbs. Did you know that homeowners can bring expired bulbs to the County's transfer station? The transfer station is located at 16101 Frederick Road, Derwood, Maryland, and is open to Montgomery County residents for hazardous waste drop-

offs Monday through Sunday, between 9:00 a.m. and 5:00 p.m. Also, there are four satellite collection events (two events each at the following schools) where the expired bulbs can be taken: Westland Middle School on May 10<sup>th</sup> (Massachusetts Avenue) and Silver Spring International Middle School on June 14<sup>th</sup> (Wayne Avenue and Dale Drive). Future dates have not been set at this time.

The Montgomery County Division of Solid Waste Services is available to discuss the cleanup and disposal of a broken CFL. As a quick reference, ventilate the area and leave the area undisturbed for 20 minutes to one hour. Then, clean up the pieces of the broken CFL by wearing rubber gloves or by using duct tape or index cards (trying not to touch). Double bag the residual to keep it contained, and place the bag in the trash or take it to a household hazardous waste site. Do not vacuum or sweep the broken CFL. For additional information, check out the following website: [www.montgomerycountymd.gov/hazardouswaste](http://www.montgomerycountymd.gov/hazardouswaste). You may also call (301) 840-2774. ❖